THE ATTORNEY GENERAL OF TEXAS

GERALD C. MANN
XXXXXXXXXXXXON
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable T. K. Wilkinson
County Auditor, Hill County
Hillsboro, Texas

Dear Sir:

Opinion No. 0-1748
Re: Does the county Auditor of Hill County, acting as purchasing agent for said county, have full authority under the statutes to control all purchases made by said county?

Your request for an opinion on the above-stated question has been received by this department.

Article 1645a-1, Vernon's Civil Statutes, reads as follows:

"That in all counties having a population of not less than twenty-four thousand, one hundred and twenty-five (24,125) nor more than twenty-four thousand, one hundred and fifty (24,150), according to the last preceding Federal Census, and employing a County Auditor, said County Auditor, in addition to the regular duties performed by him as required by law, shall act as Purchasing Agent for the county, and such Auditor shall receive as compensation for such additional services as Purchasing Agent the sum of Six Hundred Dollars ($600) annually, payable in twelve (12) equal monthly installments, such compensation to be in addition to that allowed by law for such Auditor, and to be payable out of the General Revenue of such county. Provided that in all counties having a population of not less than forty-three thousand (43,000) and not more than forty-three thousand, one hundred (43,100) according to the last preceding Federal Census, and employing a County Auditor, said County Auditor, in addition to the regular duties performed by him as required by law, shall act as Purchasing Agent for the county, and such Auditor shall receive as compensation for such additional services as Purchasing Agent the sum of Six Hundred Dollars ($600) annually , payable in twelve (12) equal monthly installments, such compensation

> to be in addition to that allowed by law for such Auditor, and to be payable out of the General Revenue of such county. Provided, further, that in all counties having a population in excess of sixty-five thousand (65,000) inhabitants according to the last preceding Federal Census, and having a tax valuation of not more than Forty Million Dollars ($40,000,000), according to the last approved tax rolls, and containing at least two incorporated cities or more than thirteen thousand, five hundred (13,500) population each, according to the last preceding Federal Census, such Auditor shall, in addition to his regular duties as Auditor, constitute the Purchasing Agent of such county when so directed by order of the Commissioners Court of such county, and such Auditor shall receive as compensation for such additional services as Purchasing Agent a sum not to exceed Nine Hundred Dollars ($900) annually, payable in twelve (12) equal monthly installments, and such compensation shall be in addition to that allowed by law for such Auditor, and payable out of the General Revenue of such county. As added Acts 1937, 45th Leg., p. 639, ch. 313, para. 1; amended Acts 1939, 46th Leg., H. B. #909, para. 1."

According to the last preceding Federal Census, Hill County had a population of 43,036 inhabitants, thus falling within the provision of the above-mentioned statute, namely, "having a population of not less than forty-three thousand (43,000) and not more than forty-three thousand, one hundred (43,100)."

Hill County is the only county in the State which, according to the last Federal Census, had a population within the limits specified in the provision of the statute above mentioned.

Section 56, Article 3 of the State Constitution reads in part as follows:

> "The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special laws, authorizing,... regulating the affairs of counties, cities, towns, wards or school districts; ... and in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to pro-

hibit the Legislature from passing special laws for the preservation of game and fish of this State in certain localities."

In the case of Gray vs. Taylor, 227 U.S. 51, the Supreme Court of the United States defined a local law as:

"The phrase 'local law' means primarily, at least, a law in fact, if not in form, directed only to a specific spot."

The case of Smith vs. State, 49 S.W. (2d) 739, holds in effect that if substantial reason for classifying municipalities by population appears, such classification and legislation applicable to such classification is generally sustained. However, the constitutional prohibition against special laws cannot be evaded by making laws applicable to a pretended class, and that a statute classifying municipalities by population is "special" if the population does not afford a fair basis for classification; if the statute merely designates a single municipality under the guise of classifying by population; and that a valid classification of municipalities by population must not exclude other municipalities from entering such classification on attaining the specified population.

We quote from this case as follows:

"In this state it is the rule that the Legislature cannot evade the prohibition of the Constitution as to special laws by making a law applicable to a pretended class, which is, in fact, no class. Clark v. Finley, supra. The courts in other jurisdictions have given effect to the same principle. Com. v. Patton, 88 Pa. 258; Board of Com'rs of Owen County, et al. v. Spangler et al., 159 Ind. 575, 65 N. E. 743. In Clark v. Finley, supra, the Supreme Court of our state said: 'In so far as the courts which undertake to define the basis upon which the classification must rest hold that the legislature cannot, by a pretended classification, evade a constitutional restriction, we fully concur with them. But if they hold that a classification which does not manifest a purpose to evade the constitution is not sufficient to support a statute as a general law merely because, in the court's opinion, the classification is unreasonable, we are not prepared to concur. To what class or classes of persons or things a

statute should apply is, as a general rule, a legislative question. When the intent of the legislature is clear, the policy of the law is a matter which does not concern the courts.' If the classification of cities or counties is based on population, whether an act is to be regarded as special, and whether its operation is uniform throughout the state, depend upon whether population affords a fair basis for the classification with reference to the matters to which it relates, and whether the result it accomplishes is in fact a real classification upon that basis, and not a designation of a single city or county to which alone it shall apply, under the guise of such classification. Parker-Washington Co. v. Kansas City, 73 Kan. 722, 85 P. 781." (Also see the cases of Ex Parte Sizemore, 8 S.W. (2d) 134, and Randolph v. State, 36 S.W. (2d) 484.)

The case of Bexar County v. Tynan, et al, 97 S.W. (2d) 567, holds in effect that the Legislature may, on a proper and reasonable classification, enact a general law which at the time of its enactment is applicable to only one county, provided the application is not so inflexibly fixed as to prevent it ever becoming applicable to other counties, and that the Legislature may classify counties on basis of population for purposes of fixing compensation of county and precinct officers, but such classification must be based on real distinction and must not be an arbitrary device to give what is in substance a local or special law, the form of a general law. And the case further holds that the courts, in determining whether a law is public, general, special, or local, will look to its substance and practical operation, rather than to its title, form, phraseology, since otherwise a prohibition of the fundamental law against special legislation would be nugatory; and to justify placing one county in a very limited and restricted classification by the Legislature, there must be some reasonable relation between the situation of counties classified and purposes and objects to be obtained, and classification cannot be adopted arbitrarily on a ground which has no foundation in difference of situation or circumstances of counties placed in different classes. The Act reducing salaries of officers in counties of over two hundred ninety thousand and less than three hundred ten thousand population was held unreasonable and arbitrary in its classification and void as a special law.

We quote from the above-mentioned opinion as follows:

"The rule is that a classification cannot be

adopted arbitrarily upon a ground which has no foundation in difference of situation or circumstances of the municipalities placed in the different classes. There must be some reasonable relation between the situation of municipalities classified and the purposes and the object to be attained. There must be something which in some reasonable degree accounts for the division into classes."

We have here an instance of arbitrary designation, rather than classification. The above-quoted statute attempts to regulate the affairs of Hill County in a manner violative of Article 3, Section 56 of the Constitution.

You are respectfully advised that it is the opinion of this department that the provisions of Article 1645a-1, Vernon's Civil Statutes, prescribing the duties of auditors in counties having a population of 43,000 to 43,100 inhabitants, is a special law, and therefore unconstitutional and void.

You are therefore advised that the County Auditor of Hill County has no legal authority to act as Purchasing Agent for said County.

We trust that the foregoing fully answers your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Ardell Williams
Ardell Williams
Assistant

AW:pbp:wc

APPROVED DEC 13, 1939
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman